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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/523,166	12/02/2005	Gerd Seibold	17601.35a.1	8236
57360 7590 07/21/2009 WORKMAN NYDEGGER 1000 EAGLE GATE TOWER, 60 EAST SOUTH TEMPLE SALT LAKE CITY, UT 84111				
EXAMINER				
BLATT, ERIC D				
ART UNIT		PAPER NUMBER		
3734				
MAIL DATE		DELIVERY MODE		
07/21/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/523,166

Applicant(s)

SEIBOLD ET AL.

Examiner

Eric Blatt

Art Unit

3734

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 4-17, 19-21 and 24-40 is/are pending in the application.
- 4a) Of the above claim(s) 25-29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-17, 19-21, 24 and 30-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 3-31-2009
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4-6, 8, 11, 13-16, 19-21, 24, 30-35, 38, and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yang et al. (US 2003/0055455) in view of Chanduszko (US 7,431,729).

Yang teaches a device for sealing a puncture (Figure 11) comprising first and second discs and a joint 162, 166 releasably coupling the discs wherein the device has a retracted delivery configuration in which the first disk is adapted to engage and substantially conform to the interior vessel surface, and the second disc is configured to engage the tissue. (Figures 4-6) The first disk is capable of being released from engagement with the interior vessel surface since this would merely require moving the first disk proximally before it is coupled to the second disk. The first disk is attached to a nut 162 and the second disk is attached to a bolt 166. The nut may be releasably coupled to the bolt. There is a delivery shaft 144 configured to facilitate coupling of the first disk to the second disk. (Paragraph 46) Since the delivery shaft 144 controls rotation of the bolt relative to the nut, it may also be used to decouple the first disk from the second disk.

Yang does not disclose the claimed disk structure wherein the disks comprise self-expanding wire frames having petals directly connected to the joints and a biodegradable membrane encasing the frames. Chanduszko teaches a similar sealing device having two disks wherein the disks comprise self-expanding wire frames having petals directly connected to the joints and a biodegradable membrane encasing the frames. (Figures 6A-7, 12, Paragraph 64) It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the disks of Yang by providing the disks such that they comprise self-expanding wire frames having petals directly connected to the joints and a biodegradable membrane encasing the frames since Chanduszko teaches that this was a known sealing disk construction and the substitution would not have produced unexpected results.

Claims 7, 9, 36 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yang et al. (US 2003/0055455) in view of Chanduszko (US 7,431,729) as applied to claims 1 and 30 and further in view of Shaw (US 6,080,182).

Yang and Chanduszko teach all elements of claims 7 and 36 as previously discussed except for the proximal element comprising a spring. Shaw teaches a similar sealing device comprising a first disk that connects to a proximal element wherein the proximal element comprises a spring. (Figure 40D) It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the apparatus of Yang by providing the second disk such that it has the spring-like structure of the proximal element shown in Figure 40D of Shaw since this was a known construction for the

proximal element of a sealing device and the substitution would not have produced unexpected results.

Yang and Chanduszko teach all elements of claims 9 and 39 as previously discussed except for at least one delivery element being constrained to translate a maximum distal depth. Shaw discloses a related system having at least one delivery element constrained to translate a maximum distal depth. (Figure 36, Column 17, Lines 16-30) It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system of Yang by providing a delivery element constrained to translate a maximum distal depth in order to provide a mechanical indication to a physician that the sealing device has been pushed out of the delivery catheter as taught by Shaw.

Claims 10 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yang et al. (US 2003/0055455) in view of Chanduszko (US 7,431,729) as applied to claims 1 and 30 and further in view of Stevens et al.. (US 5,855,614).

Yang and Chanduszko teach all elements of claims 10 and 37 as previously discussed except for one or both of the first disk and the proximal element comprising barbs, hooks, sharp edges, or roughened surfaces. Stevens discloses a related sealing device wherein the first disk and the proximal element comprise barbs, hooks, sharp edges, or roughened surfaces. (Figures 10-15, Column 20, Lines 27-48) It would have been obvious to one of ordinary skill in the art at the time of the invention to further

modify the apparatus of Yang et al by providing barbs, hooks, or sharp edges to aid the closure device in engaging the vessels walls as taught by Stevens.

Claims 12 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yang et al. (US 2003/0055455) in view of Chanduszko (US 7,431,729) as applied to claims 1 and 14 above, and further in view of Van Tassel et al et al (US 6,949,113).

Yang and Chanduszko teach all elements of claims 12 and 17 as previously discussed except for a coagulant-enhancing agent being disposed on one or both of the first disk and the proximal element. Van Tassel et al discloses device for sealing an opening in a blood vessel comprising a coagulant-enhancing agent that is disposed on a disk. (Column 12, Lines 20-24) It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the apparatus of Yang et al by providing a coagulant-enhancing agent that is disposed on one or both of the first disk and the proximal element to prevent blood from passing through the sealed puncture as taught by Van Tassel et al.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Blatt whose telephone number is (571)272-9735. The examiner can normally be reached on Monday-Friday, 9:00 AM-6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on 571-272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Eric Blatt/
Examiner, Art Unit 3734

/Todd E Manahan/
Supervisory Patent Examiner, Art Unit 3734